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Public Hearing Date:	September 12, 2006
Land Use Action Date:	November 7, 2006
Board of Aldermen Action Date:	November 20, 2006
90-Day Expiration Date:	December 11, 2006

TO: Board of Aldermen

FROM: Michael Kruse, Director of Planning and Development
Nancy Radze, Chief Planner
Jean Fulkers, Principal Planner

DATE: September 8, 2006

SUBJECT: **Petition #281-06** WILLIAM M. & SUSAN S. WHISTLER petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to exceed the Maximum Build Factor of 20 at 10 ANDREW STREET, Ward 8, NEWTON HIGHLANDS, for a lot containing approximately 10,003 sf and a Build Factor of 22.61, which would result from the proposed sale of 3,300 s.f. of land to an abutting property located at 95 Dedham Street. The property is also identified as Sec 83, Blk 6, Lots 16A and 16 and located in a district zoned SINGLE RESIDENCE 3.

CC: Mayor David B. Cohen

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information that will be presented at or after the public hearing that the Land Use Committee will consider in its discussion at a subsequent Working Session.

EXECUTIVE SUMMARY

The petitioners are seeking a special permit to allow a Build Factor of 22.61. This exceeds the Build Factor requirement of 20 for lots within an SR3 District.

10 Andrew Street Zoning

Zoning Districts

- Single Res. 1
- Single Res.
- Single Res. 3
- Business 1
- Business 2
- Business 4
- Business 5
- 1 Um. Manuf.
- Manuf.
- Multi-Res. 1
- Multi-Res. 2
- Multi-Res. 3
- Multi-Res. 4
- Mixed Use 1
- Mixed Use 2
- OS/Rec.
- Public Use

Newton Boundary

F-1 Property Boundaries

Ponds/Rivers

Streams

Intermittent
/v Perennial

Pond Names

Buildings

Street Names

Stream Names

on this



This map is derived from a digital data base created using the Newton Geographic Information System (GIS). Newton cannot guarantee the accuracy of the information contained in this map, nor is it responsible for determining its suitability for its intended use. Users are advised to consult the City of Newton's GIS Department for applicable information.

GIS

not to scale

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ELEMENTS OF THE PETITION

The petitioners are requesting a special permit to allow their property to exceed the Build Factor required for an SR3 zoning district. The petitioners, owners of 10 Andrew Street, are proposing to reduce the size of their existing lot, by selling a 3,300 s.f. portion of the lot to neighbors at 95 Dedham Street. According to the petitioners, the purpose of the land transaction is to provide the neighbors at 95 Dedham Street with land that naturally appears to be part of that property and, given the siting of the single family structure, is more likely to be used by the residents at 95 Dedham Street. The petitioners are also proposing to establish a 10-ft. wide utility easement across the portion of land to be transferred. The utility easement will provide access to the petitioners' gas line coming into their property via Dedham Street.

The existing lot at 10 Andrew Street is an "L" shape that surrounds the adjoining lot at 95 Dedham Street on two sides. The configuration of the lots, should the special permit be approved and the transaction completed, will truncate one arm of the "L". The lot at 95 Dedham Street will become a corner lot with frontage on Dedham and Andrew Streets. (*SEE ATTACHED FIGURE*).

II. BACKGROUND

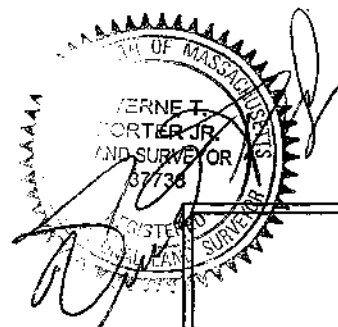
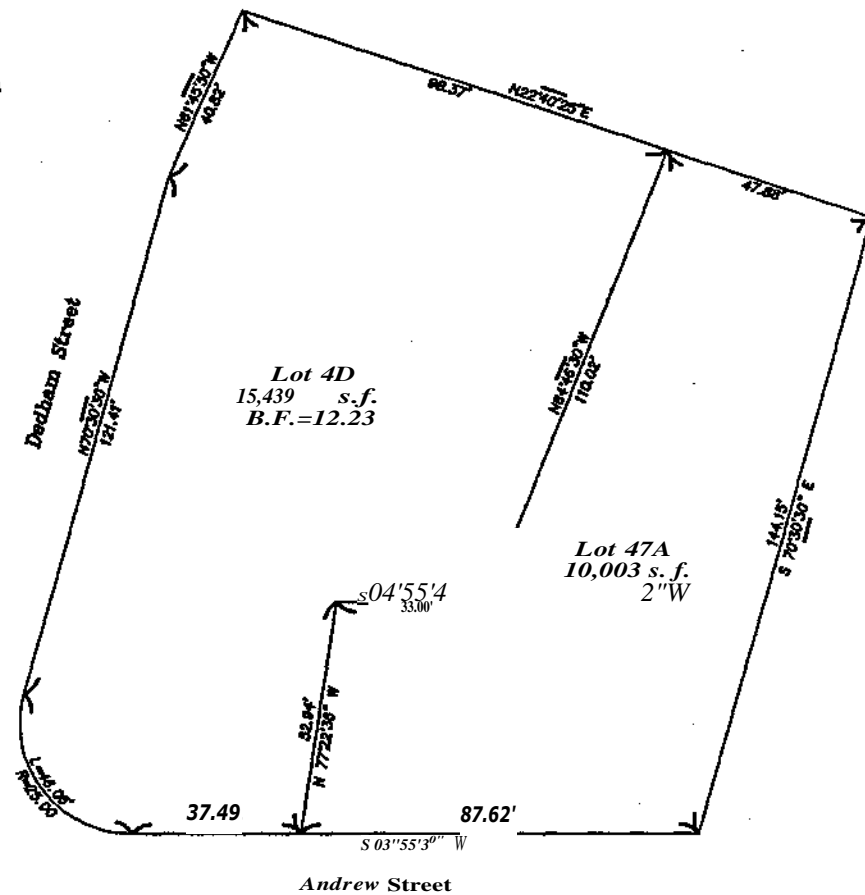
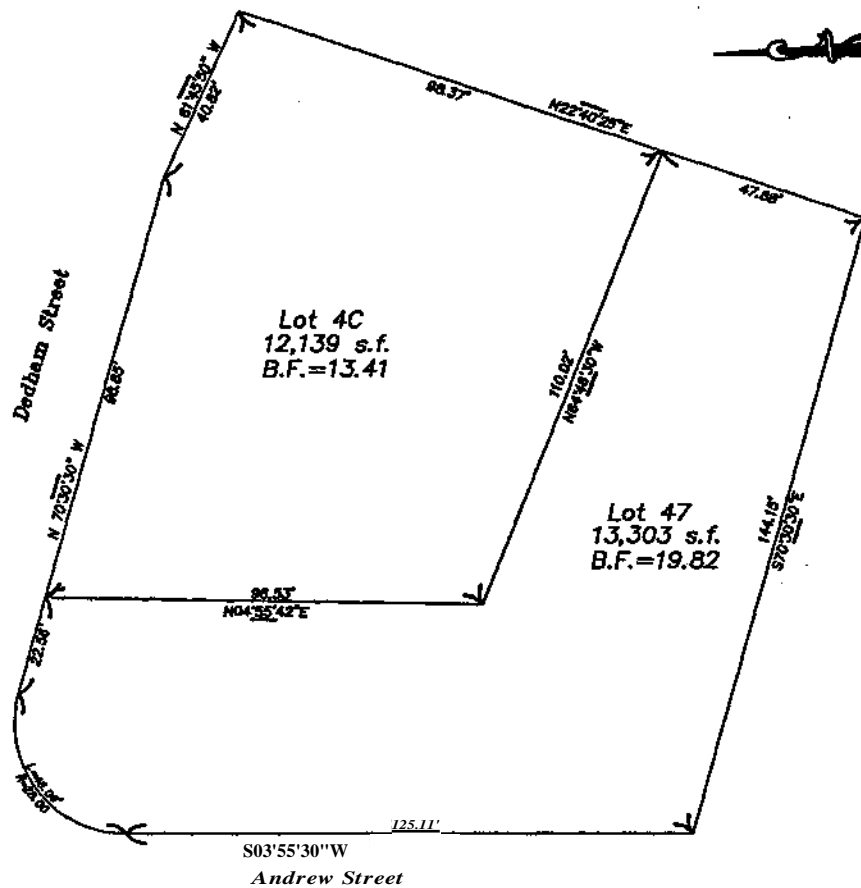
The abutting property at 95 Dedham Street appears to be the original house for a larger parcel that was subdivided in 1955 to create the lot known as 95 Dedham Street. Prior to 1955 the lot and its structures, which are within the 30-ft. front setback, would have been considered legally non-conforming. When the parcel was subdivided in 1955 it became subject to post-1953 new lot zoning requirements. Though undetected in 1955, in 2001 subsequent owners discovered the non-compliance when the owners proposed to further subdivide the property. The location of the garage, 19.3 ft. from the front property line, and the house, 21.5 ft. from the front property line, did not comply with post-1953 dimensional requirement for a 30-ft. front setback, and was in non-compliance with the zoning regulations. Consequently, the owners requested a zoning variance to bring the property into compliance. A variance was granted by the Zoning Board of Appeals in 2001 (*SEE ATTACHMENT "A", ZB A#10-01*).

The decision of the ZBA included the following findings and determinations:

- the house and garage were built before zoning was enacted,
- the property can't be sold as complying with zoning without a variance,
- there will be no change to the character of the surrounding area, and
- there is no substantial detriment to the public.

The subject property (10 Andrew Street) and the abutting property (95 Dedham Street) were subsequently created by a subdivision plan filed at the Land Court in 2001, when the owner of 95 Dedham Street sold off a portion his property to create 10 Andrew Street.

According to the petitioners' representative, the existing lot lines for 10 Andrew Street were laid out in 2001 to specifically avoid exceeding the Build Factor required in the Zoning Ordinance. Over time, the two neighbors realized that this corner portion is more naturally a part of the lot at 95 Dedham Street, and given that all other zoning



SKETCH PLAN OF LAND	
NEWTON, MASSACHUSETTS	
TO ACCOMPANY THE PETITION OF	
% %wan M. & SUSAN S. WHISTLER 10 ANDREWS STREET, NEWTON, MA. SECTION 83, BLOCK 6, Lot 16A	
SCALE: 1"=20'	NOVEMBER 14, 2005
VERNE T. PORTER JR., PLS LAND SURVEYORS - CIVIL ENGINEERS 354 ELLIOT STREET, NEWTON, MA. 02464	
40 60 80 100 US	

requirements are met (with variance), should be formally transferred to 95 Dedham Street.

ZONING RELIEF/APPROVALS

Based on the Chief Zoning Code Official's zoning review (*SEE ATTACHMENT "B"*), the petitioners are seeking relief from or approvals through the following sections of the Zoning Ordinance:

- *Section 30-15, (p) for a Build Factor of 22.61, exceeding the limit of 20 established for the SF3 zone.*
- *Section 30-23 for Site Plan Approval of the reconfigured lot at 10 Andrew Street.*
- *Section 30-24 for Special Permit Approval.*

IV. SIGNIFICANT ISSUES FOR CONSIDERATION

- *Whether the proposed excess in Build Factor results in a lot that would have a negative impact on the surrounding neighborhood.*

V. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Site

The lot at 10 Andrew Street is located in a Single Residence 3 District, in Ward 8. The existing house was constructed in 2002 and is just under 2,000 s.f. The adjoining lot at 95 Dedham Street is 12,139 s.f in size and is improved with a 2,500 s.f. home built in 1907. The existing lots are 13,303 sf (10 Andrew Street) and 12,139 sf (95 Dedham Street).



Figure 1. 10 Andrew Street



Figure 2. 95 Dedham Street

B. Neighborhood

The subject site is located within a larger neighborhood of modest single-family homes. Houses along Dedham Street show a wide range of architectural styles and building dates, while the houses on Andrew Street date from the late 1950s and early 1960s when the area was subdivided. The subject site is south of Boylston Street (Route 9), in the Newton Highlands neighborhood.

VI. ANALYSIS

A. Technical Review

The following table illustrates how the proposed reconfigured lots compare to the dimensional and parking requirements of the Zoning Ordinance.

SINGLE RESIDENCE 3 ORDINANCE		10 ANDREW STREET		95 DEDHAM STREET	
		EXISTING	PROPOSED Lot 47A	EXISTING	PROPOSED Lot 4D
Min. Lot Size	10,000 s.f.	13,303 s.f.	10,003 s.f.	12,139 s.f.	15,439 s.f.
Min. Frontage	80 ft.	125.11 ft.	87.62 ft.	98.85 ft.	121.41 ft.
Setbacks					
Front	30 ft.	44.5 ft.	44.5 ft.	19.3 ft'	19.3 ft'
Side	10 ft.	10.4 ft.	10.4 ft.	21.2 ft.	21.2 ft.
Rear	15 ft.	35.5 ft.	35.5 ft.	15.4 ft.	15.4 ft.
Max Lot Coverage	30%	10.11%	13.44 %	17.72%	13.93%
Min. Open Space	50%	78%	70.74%	74.34%	79.82%
F.A.R.	0.35	.1925	.2560	.2502	.1967
Build Factor	20.0	19.82	22.61	13.41	12.23
Parking Spaces	2 stalls	2	2	2	2

' Setback approved as variance per ZBA#10-01.

As shown in the table above the lot and residence meet all of the dimensional requirements except the Build Factor for 10 Andrew Street and setbacks for 95 Dedham Street, for which variances were granted.

B. Relevant Site Plan Approval Criteria, Section 30-23

1. Consideration of site design, including the location and the relationship of the site's structures to nearby structures.

The house constructed at 10 Andrew Street in 2002 is oriented with its front door facing the narrow end of the lot on Andrew Street. The leg of the "L" shaped lot reaching to Dedham Street appears to have little relationship to the house itself. Reconfiguring the lot will not create a house or lot that is cut-off from the adjacent neighborhood or which has an awkward access.

The reconfiguration of the lots will extend the side yard of the lot at 95 Dedham and reduce the long "L" shaped extension from the lot at 10 Andrew Street. Although the new lot at 10 Andrew will exceed the Build Factor, the conveyance of the corner piece will actually serve to create a more regular shaped lot, which appears more consistent with the neighborhood.

The purpose of the Build Factor regulation is to prevent the creation of lots that meet minimum lot area, but are awkwardly shaped and have the potential for conflict with other zoning regulations. A lot that is square in plan will have a lower Build Factor than a lot of exactly the same size in area, but with a long and narrow, or angled perimeter. Though the proposed lot at 10 Andrew Street is becoming more squared off in shape, the overall size will also be reduced, and this too impacts the calculation of the Build Factor.

The proposal also calls for the creation of a utility easement to access the gas service for 10 Andrew Street. The easement is 10 ft. wide and runs from Dedham Street to the petitioners' property.

C. Relevant Special Permit Criteria, Section 30-24

1. The specific site is an appropriate location for such use/structure.

The lot at 10 Andrew Street, and the expanded lot at 95 Dedham Street, will meet the requirements of the City's Zoning Ordinance, with the exception of the Build Factor for 10 Andrew Street, and the front setbacks for 95 Dedham Street, for which the owner was previously granted a variance. Though 95 Dedham Street is not the subject of the special permit request, the owner cannot purchase the corner portion of 10 Andrew Street without the approval of this special permit, and is therefore a direct beneficiary of the special permit request. If the lot at 95 Dedham Street is expanded by 3,300 s.f., it will allow the property owner to potentially expand the size of the existing structure and still meet current requirements for Floor Area Ratio. Any such expansion would need to comply with the post-1953 dimensional controls, Section 30-15 of the Revised Zoning Ordinance.

2. The use as developed and operated will not adversely affect the neighborhood

Although an increase in Build Factor results from the reconfiguration of the lots this should have no impact on the neighborhood.

The two reconfigured lots are not expected to adversely affect the neighborhood. The presence of a utility easement with an existing gas line should prevent new construction from occurring on the corner of the site, where it would have the most impact on the neighborhood. The Associate City Engineer stated that the easement must be documented and recorded with the Registry of Deeds.

A site visit by Planning Department staff revealed that the lot area to be transferred is currently improved with a collection of sizeable English Yews, probably planted around the time when the house at 95 Dedham Street was constructed. Documents in the property files indicate that a landscape nursery was located on the original parcel. Although not a criteria of the special permit, the Planning Department urges the current and prospective owners to protect and preserve these large specimens.

VI. SUMMARY

The increase in Build Factor for 10 Andrew Street is slightly above the limit of 20 established for Single Residence 3 Districts, but should not have any negative impact on the two lots in question. Additionally, the reconfigured lots should not have a negative impact on the surrounding neighborhood.

If the Board of Aldermen choose to approve this request for special permit, the Board should require that the petitioners record the proposed utility easement with the Registry of Deeds.

ATTACHMENTS:

ATTACHMENT **A**: ZONING REVIEW MEMORANDUM, JUNE 14, 2006

ATTACHMENT **B**: **ZBA** #10-01, MARCH 27, 2001

#10-01

Detailed Record of Proceeding and Decision

Petition of Charlotte Crowder Shaughnessy, 162 Cottage Street, Natick, MA.

For a variance from the front setback requirement to legalize non-compliant lot at 95 Dedham Street, Newton Centre, containing an existing single family dwelling and a detached garage within the front setback.

The Zoning Board of Appeals for the City of Newton held a public hearing on the above entitled proceeding on Tuesday, March 27, 2001 at 5:30 p.m. in the Aldermanic Chambers at City Hall, Newton, Massachusetts.

The following members of the Board were present:

Anthony Summers, Acting Chairman
Catherine Clement
Selma Urman
Frank DeVito
Joseph Cosgrove

The petition was filed on February 23, 2001.

Due notice of the hearing was given by mail, postage prepaid, to all persons deemed to be affected thereby as shown on the most recent tax list and by publication in the News Tribune, a newspaper of general circulation in Newton, Massachusetts.

Accompanying the petition was a plan entitled "Area Plan To Accompany The Petition Of Charlotte Crowder Shaughnessy, Trustee" and "Plot Plan To Accompany The Petition Of Charlotte Crowder Shaughnessy, Trustee" dated February 23, 2001 by Verne T. Porter, Land Surveyor, 154 Needham Street, Newton, MA.

FACTS:

The petitioner was represented by Attorney Michael Peirce of Mofenson and Nicoletti LLP, 3 Newton Executive Park, Newton Lower Falls.

The subject site is located at 95 Dedham Street, Newton Centre, MA, Ward 8, Section 83, Block 6A, Lot 16 containing approximately 25,442 square feet of lot area in a Single Residence 3 District.

The petitioner stated that they propose to legalize the front setback of the existing dwelling and detached garage certain dimensions of the property in light of the discovery at this time that the subdivision, which occurred in 1955, was improperly approved. The petitioner was concerned that any future additions, which normally would be as of right, would need to receive relief from the board.

The petitioner stated that a variance from Section 30-15 Table I for a post 53 new lot for an existing front setback of 21.4' for the dwelling and 19.3' for the garage from the requirement of 30' in the Single Residence 3 District.

Ms. Lookner of 20 Andrews Street spoke in opposition stating that she had concerns about further subdivision.

FINDINGS AND DETERMINATION

1. The site is unique due to the corner lot location combined with the fact the house was built before zoning was enacted.
2. A hardship exists in that the property can't be sold as complying with zoning without the granting of a variance for the dwelling and the garage.
3. No substantial detriment to the public would occur since the house and detached garage, always have been in conformity with the neighborhood.
4. Granting the variance would not derogate from the spirit and intent of the Zoning Ordinance in that the departure from the Zoning Ordinance requirement would not change the character of the surrounding area.

Accordingly, a motion was made by Mr. Summers, and duly seconded by Ms. Urman to grant the petition, which motion passed, four in favor and one opposed (Mr. DeVito). Therefore, the variance is granted subject to the following conditions:

1. That this variance must be exercised within one year from the date of its filing with the City Clerk or the variance lapses.

2. That this variance must be recorded with the Middlesex Registry of Deeds within one year from the date of its filing with the City Clerk or the variance lapses.

Anthony Summers, Acting Chairman

AYES: Anthony Summers
Catherine Clement
Selma Urman
Joseph Cosgrove

NAYS: Frank DeVito

Copies of this decision and all plans referred to in this decision have been filed with the Planning and Development Board and the City Clerk.

The decision was filed with the City Clerk on

The City Clerk certified that all statutory requirements for the issuance of this VARIANCE have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to Section #17, Chapter 40A has been filed.

Edward English, City Clerk

I, Pam Hough, am the Clerk of the Zoning Board of Appeals and the Keeper of its records. This is a true copy of its decision.

Pam Hough

Zoning Review Memorandum

Dt: June 14, 2006

To: G. Michael Peirce, representing Wm. and S. Whistler

Fr: Juris Alksnitis, Chief Zoning Code Official



Cc: Michael Kruse, Director, Department of Planning and Development
John Lojek, Commissioner of inspectional Services

Re: Proposed change to lot area, shape, and Build Factor.

Applicant: William M. and Susan S. Whistler

Site: 10 Andrew St., Newton

Zoning: Single-Residence 3

SBL: Section 83, Block 06, Lot 16A

Lot Area: 13,303 sq. ft. - Exist.

10,003 sq. ft. - Prop.

Current use: Single-family dwelling

Prop. use: Single-family dwelling

Background:

The petitioners seek to sell a 3,300 sq. ft. portion of their lot to their neighbors at 95 Dedham St. Both resulting lots will comply with post-1953 dimensional requirements. As the petitioners' resized lot will not meet the Build Factor requirement established in Section 30-1 5(p), the owners seeks relief from the Board of Aldermen for a Build Factor exceeding 20 in the SR--3 zone.

Administrative determinations

1. The subject SR-3 zoned lot and adjacent lot at 95 Dedham St. were created by a subdivision plan filed at the Land Court in 2001. As a result, these parcels are "new lots" created after December 7, 1953 and subject to post-1953 requirements per Table 1, *Density and Dimensional Controls in Residence Districts and for Residential Uses* (Table 1). The adjacent lot at 95 Dedham St. was granted variances by the Zoning Board of Appeals as to front setbacks pertaining to the primary residential structure and also detached garage per ZBA #10-01. As a result, both properties, which have

Plans and materials reviewed:

- Plan titled "Plan of Land, Newton, MA to Accompany the Petition of William M. and Susan S. Whistler, 10 Andrews St., Newton, MA, SBL 83-6-16A", dated November 14, 2005, prepared by Verne T. Porter Jr., PLS, Land Surveyors - Civil Engineers, 354 Elliot St., Newton, MA 02464, 2, Lynnfield, MA 01940, stamped and signed by Verne T. Porter Jr., Registered Professional Land Surveyor.
- Plan titled "Area Plan, Newton, MA to Accompany the Petition of William M. and Susan S. Whistler, 10 Andrews St., Newton, MA, SBL 83-6-16A", dated November 14, 2005, prepared by Verne T. Porter jr., PLS, Land Surveyors - Civil Engineers, 354 Elliot St., Newton, MA 02464, 2, Lynnfield, MA 01940, stamped and signed by Verne T. Porter jr., Registered Professional Land Surveyor.
- Zoning Board of Appeals Decision #10-01, March 27, 2001, granting variances pertaining to front setbacks at 95 Dedham St.